

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA,** )

**Plaintiff,** )

**v.** )

**TYSON FOODS, INC., et al.,** )

**Defendants.** )

**Case No. 05-cv-329-GKF(SAJ)**

**STATE OF OKLAHOMA'S MOTION TO DETERMINE THE SUFFICIENCY OF  
DEFENDANT PETERSON FARMS, INC.'S RESPONSES TO THE STATE'S APRIL 20,  
2007 REQUESTS TO ADMIT AND INTEGRATED BRIEF IN SUPPORT THEREOF**

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COMES NOW Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA (the "State"), and respectfully moves this Court for an order finding Peterson Farms, Inc.'s ("Peterson") responses to the State's April 20, 2007 requests to admit insufficient, overruling Peterson's objections and deeming the requests admitted or, alternatively, requiring Peterson to respond to each of the requests without objection.<sup>1</sup> In support of its motion, the State states as follows:

### **I. Introduction**

On April 20, 2007, the State served 13 requests to admit on Peterson. *See* Ex. 1. With respect to each of the 13 requests, Peterson interposed a litany of objections, primarily by incorporating its General Objections to the State's definitions. Peterson then made responses to seven requests and answered the remaining six requests by stating that "Peterson Farms has made a reasonable inquiry and the information known or readily knowable by Peterson Farms is insufficient to enable it to admit or deny the request." *See* Ex. 2. Although Peterson has responded with some form of admission or denial for seven of the requests, Peterson conditioned all of its responses on unfounded objections. *Id.* As a result, the State cannot determine exactly which facts Peterson admits or denies or the true basis for Peterson's inability to admit or deny the requests. Peterson's responses are plainly insufficient under the Federal Rules.

While Peterson objects on other grounds as well, many of its objections focus on the definitions used in the State's requests. The definitions used in the State's requests, however, are

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<sup>1</sup> Pursuant to LCvR 37.1, counsel advises the Court that the parties to this discovery dispute have met and conferred in an effort to resolve their differences but have been unable to reach an accord.

clear and understandable. In fact, a large number of the definitions were derived from statutory definitions. *See* Ex. 1 ("Definitions" section). Moreover, as set forth in more detail below, Peterson's additional objections are unfounded. Accordingly, Peterson's objections should be overruled in their entirety, and Peterson should be required to respond to the requests without objection.

## **II. Legal Standard**

Fed. R. Civ. P. 36(a) sets forth the requirements of a party responding to requests to admit:

Each matter of which an admission is requested shall be separately set forth. . . . If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

Fed. R. Civ. P. 36(a) also sets forth the procedure for determining the sufficiency of a party's response to requests to admit:

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(Emphasis added.) The purpose of Fed. R. Civ. P. 36, "essentially, and hopefully, [is to] limit the factual issues in the case." *Henry v. Champlain Enterprises, Inc.*, 212 F.R.D. 73, 77 (N.D.N.Y. 2003). They are "designed to reduce trial effort and promote litigation efficiency." *Id.* "More important, the binding effect of Admissions is intended to lend clarity to the presentation of disputed facts in the litigation." *Id.*

Courts are clear that gamesmanship in responding to requests to admit should not be tolerated. As explained in *Lamoureux v. Genesis Pharmacy Services, Inc.*, 226 F.R.D. 154, 163 (D. Conn. 2004):

[W]hile qualification is permitted "where a request contains assertions which are only partially correct, a reviewing court should not permit a responding party to undermine the efficacy of the rule by crediting . . . hair-splitting distinctions whose unarticulated goal is unfairly to burden an opposing party." *Thalheim v. Eberheim*, 124 F.R.D. 34, 35 (D. Conn. 1988). The court finds this to be just such an instance. Discovery is not the place for overly nuanced, metaphysical distinctions. Adopting Socrates' "the only true wisdom is in knowing you know nothing," one could reasonably deny all requests for admission. Our system of discovery, understandably, does not permit such a practice."

*See also United States ex rel. Englund v. Los Angeles County*, 235 F.R.D. 675, 684 (E.D. Calif. 2006) ("Parties may not view requests for admission as a mere procedural exercise requiring minimally acceptable conduct. They should focus on the goal of the Rules, full and efficient discovery, not evasion and word play") (citation omitted). "A party may not avoid responding based on technicalities." *Englund*, 235 F.R.D. at 684. "Requests for admission are not games of 'Battleship' in which the propounding party must guess the precise language coordinates that the responding party deems answerable." *House v. Giant of Maryland, LLC*, 232 F.R.D. 257, 262 (E.D. Va. 2005); *see also Ice Corp. v. Hamilton Sundstrand, Inc.*, 2007 WL 1297120, \*16 (D. Kan. Apr. 30, 2007) ("The party objecting to a discovery request bears the burden to show such vagueness and ambiguity").

### III. Argument

#### A. Peterson's General Objections are unfounded

##### 1. The State's definition of "poultry waste" is not objectionable

Peterson has objected that the State's definition of "poultry waste"<sup>2</sup> is "overly broad, inconsistent with the terminology set forth in statutes and regulations governing poultry operations in the Illinois River Watershed ("IRW"), and includes substances not typically associated with poultry litter." The fact of the matter is that the definition of "poultry waste" used by the State is taken, with slight modification, from the Oklahoma Registered Poultry Feeding Operations Act. *See* 2 Okla. Stat. § 10-9.1(B)(21).<sup>3</sup> It is under the Oklahoma Registered Poultry Feeding Operations Act that growing operations in Oklahoma for which Peterson is legally responsible are regulated. The State's definition is clear, straightforward, and consistent with the terminology set forth in the statutes and regulations governing poultry growing operations in the IRW.<sup>4</sup> Moreover, the State's use of the term "poultry waste" is consistent with documents that Peterson has used in communications with its contract growers. *See generally* Ex. 3 (Poultry Water Quality Handbook).

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<sup>2</sup> The State's definition of "poultry waste" is as follows: "'Poultry waste' means poultry excrement, poultry carcasses, feed wastes and / or any other waste associated with the confinement of poultry from a poultry feeding or growing operation." Ex. 1 (Definition 1).

<sup>3</sup> The only changes from the statutory definition have been to change the word "or" to "and / or" and to change the phrase "poultry feeding operation" to "poultry feeding or growing operation." Neither of these materially changes the substance of the definition.

<sup>4</sup> The term "poultry waste" is also widely used throughout the industry. For example, there is an annual National Poultry Waste Management Symposium. *See, e.g.*, Ex. 4. Moreover, North Carolina State University has an Animal & Poultry Waste Management Center. *See* Ex. 5.



**2. The State's definition of "your poultry growing operations" is not objectionable**

Peterson has objected that the State's definition of "your poultry growing operations"<sup>5</sup> is "argumentative" and ignores "the legal and factual distinction between Peterson Farms owned and operated facilities (of which there are none in the IRW), and those operations owned and operated by independent contractors." The State's definition does not, contrary to Peterson's contention, assert that poultry growing operations under contract with Peterson are owned by Peterson. The States' definition merely identifies the two types of operations for which the State contends Peterson is legally answerable in this action.<sup>6</sup> Defining "your poultry growing operations" in the manner the State has is therefore entirely appropriate. Peterson is not entitled

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<sup>5</sup> The State has defined "your poultry growing operations" as follows: "'Your poultry growing operations' means Peterson Farms, Inc.'s poultry growing operations and / or poultry growing operations under contract with Peterson Farms, Inc." Ex. 1 (Definition 2).

<sup>6</sup> Peterson is responsible as a matter of law for the poultry waste generated by the growing operations for the known or foreseeable contract activities of its growers. As set forth in Restatement (Second) Torts § 427B ("Work Likely To Involve Trespass Or Nuisance"):

One who employs an independent contractor to do work which the employer knows or has reason to know to be likely to involve a trespass upon the land of another or the creation of a public or a private nuisance, is subject to liability for harm resulting to others from such trespass or nuisance.

*See, e.g., Tankersley v. Webster*, 243 P. 745, 747 (Okla. 1925) ("... where the performance of [a] contract, in the ordinary mode of doing the work necessarily or naturally results in producing the ... nuisance which caused the injury, then the employer is subject to the same liability to the injured party as the contractor"); *City of Tulsa v. Tyson Foods, Inc.*, 258 F.Supp.2d 1263, 1296-97 (N.D. Okla. 2003), *subsequently vacated in connection with settlement* ("... the Court finds Poultry Defendants had 'reason to recognize that, in the ordinary course of [the growers] doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result.' ... Accordingly, the Court grants plaintiffs' motion for partial summary judgment on the issue of the Poultry Defendants' vicarious liability for any trespass or nuisance created by their growers because they were aware that in the ordinary course of doing the contract work, a trespass or nuisance was likely to result.") (citations omitted).

to rewrite the definition to suit its desires. *See, e.g., Chapman v. California Department of Education*, 2002 WL 32854376, \*3 (N.D. Cal. Feb. 6, 2002) (on motion to compel responses to interrogatories, court states that "[t]he proponent of discovery is master of its terms. So long as the information sought is within the broad bounds or relevancy as set forth in Rule 26 and is otherwise properly discoverable, the respondent may not unilaterally reshape or rephrase the discovery request").

### 3. The State's use of the term "phosphorus" is not objectionable

Peterson has objected that the State's definition of "phosphorus"<sup>7</sup> is "overbroad and technically incorrect." The State's definition is consistent with the *City of Tulsa* decision holding that phosphorus compounds are included within the term "phosphorus" for purposes of CERCLA. *See City of Tulsa*, 258 F.Supp.2d at 1283-85. Peterson is not permitted to rewrite the State's requests in order to write out a term it does not like. *See, e.g., Chapman*, 2002 WL 32854376, \*3.

Moreover, in its filings in the instant action, Peterson itself has used the term "phosphorous" to include phosphates or phosphorus compounds. *See* Third-Party Complaint, ¶ 2 [DKT # 80] ("[I]t is clear that Plaintiffs [sic] are asserting that any conduct within the IRW which results in the release of phosphates or phosphorus-containing compounds (hereinafter referred collectively as 'phosphorous') . . ."). Moreover, the State's definition of the term "phosphorus" is consistent with documents that Peterson sends out to its contract growers. *See* Ex. 3 (Poultry Water Quality Handbook), at PIDGEON.0643 ("Poultry wastes also contain

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<sup>7</sup> The State has defined the term "phosphorus" as follows: "'Phosphorus' means phosphorus, phosphate and / or phosphorus compounds." Ex. 1 (Definition 3).

significant amounts of phosphorus." To now argue that the State's definition of "phosphorus" is "overly broad" and "technically incorrect" is therefore disingenuous.

#### 4. The State's use of the term "pathogens" is not objectionable

Peterson has objected that the State's definition of "pathogens"<sup>8</sup> is "misleading, overly broad, vague and ambiguous." Peterson further objects that the State's definition "seeks for Peterson Farms to admit as a predicate to its responses that the purported listed substances are pathogenic, which are factual issues in dispute in the lawsuit." Moreover, Peterson claims that the State's definition "seeks to define the term, while at the same time it states that the term is not limited to the specific examples set forth therein." Peterson also objects to the definition "as it loosely describes broad categories of substances that are not necessarily harmful or pathogenic."

The core of the State's definition is derived from an EPA definition. *See* <http://www.epa.gov/OCEPaterms/pterm.html> (defining "pathogens" as "[m]icroorganisms (e.g., bacteria, viruses, or parasites) that can cause disease in humans, animals and plants"). It is not vague or overly broad. Neither is it misleading. Peterson's apparent complaint with the definition is that the inclusion within it of "total coliforms" and "fecal coliforms" is inappropriate. The inclusion of "total coliforms" and "fecal coliforms" as examples of microorganisms falling within the definition of pathogens is appropriate, however, inasmuch as total coliforms and fecal coliforms do contain within their definitions bacteria that can cause

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<sup>8</sup> The State has defined "pathogens" as follows: "'Pathogens' means microorganisms (e.g., bacteria, viruses, or parasites) that can cause disease in humans, animals and plants including, but not limited to, total coliforms, fecal coliforms, fecal streptococci (including individual species), enterococci (including individual species), *Escherichia coli*, *Campylobacter jejuni*, *Salmonella* sp., *Brevibacterium* sp., *Staphylococcus aureus*, *Shigella* sp., *Cryptosporidium parvum*, and / or *Listeria monocytogenes*." Ex. 1 (Definition 4).

disease / are pathogenic. Moreover, total coliforms and fecal coliforms are accepted as indicators of the likely presence of pathogenic microorganisms.

Finally, Peterson's objection that the State's definition of "pathogens" "seeks to define the term, while at the same time it states that the term is not limited to the specific examples set forth therein" is also unfounded. For the reasons stated above, this is an entirely appropriate method of defining a term. Moreover, if Peterson was concerned with admitting to or denying requests as to substances not identified in the definition, it could, as the Rules require, "specify so much of [the request] as is true and qualify or deny the remainder." Fed. R. Civ. P. 36(a). A general objection to the definition on those grounds is not sufficient under the Rules.

#### **5. The State's definition of the term "run-off" is not objectionable**

Peterson has objected that the State's definition of "run-off"<sup>9</sup> is "misleading, overly broad, vague and ambiguous" and that "it includes within its scope both the acts of nature and volitional or negligent acts of persons, which cannot be characterized by a single term." Peterson further objects that "the term is also ambiguous is [sic] that it is unclear whether [the State is] suggesting that a 'release' involves the substance [it defines] as 'poultry waste,' or whether it also includes chemical or other constituents which comprise some fraction of 'poultry waste.'" Lastly, Peterson also objects to the definition because it "employs the term 'release,' which has a specific statutory and regulatory meaning, and as such, the definition seeks for Peterson Farms, as a predicate to its responses, to admit factual and legal matters, which are in dispute in this lawsuit."

The State's definition of "run-off" is taken, with slight modification from the administrative regulations implementing the Oklahoma Registered Poultry Feeding Operations

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<sup>9</sup> The State has defined the term "run-off" as follows: "'Run-off' means any release by leaking, escaping, seeping, or leaching of poultry waste, directly or indirectly, into Waters of the State." Ex. 1 (Definition 5).

Act. *See* Okla. Admin. Code § 35:17-5-2 ("Runoff means any release by leaking, escaping, seeping, or leaching of poultry waste into waters of the State"). "Run-off" of poultry waste is prohibited under the Oklahoma law that governs the poultry growing operations in Oklahoma for which Peterson is legally responsible. *See* Okla. Admin. Code § 35:17-5-5(a)(7)(C) ("... Runoff of poultry waste from the application site is prohibited"); Okla. Admin. Code § 35:17-5-5(c) ("Storage and land application of poultry waste shall not cause a discharge or runoff of significant pollutants to waters of the State or cause a water quality violation to waters of the State"). The State's definition of the term "run-off" is therefore appropriate and requires a clear response without objection.

Peterson's objection to the State's definition of "run-off" on the ground the definition uses the word "release" is also unfounded. There is nothing in the State's definition to lead one to believe that the word "release" is being used in anything other than its plain English meaning. *See* Merriam Webster's Collegiate Dictionary (10th ed.) ("the state of being freed"). Peterson's effort to create ambiguity by attempting to engraft a CERCLA meaning to a word being used within the definition of another term is simply an impermissible rewrite of the State's definition. In any event, even in the CERCLA context, implicit in Peterson's objection is the unsubstantiated and erroneous contention that all poultry waste for which Peterson is legally responsible under CERCLA falls within the "normal application of fertilizer" exception of CERCLA; poultry waste, however, plainly can by definition result in a "release" under CERCLA. Simply put, Peterson's objection to the definition of "run-off" is improper. *See Lamoureux*, 226 F.R.D. at 163; *Englund*, 235 F.R.D. at 684.

Finally, to the extent Peterson attempts to avoid responding to any request using the term "run-off" on the ground that the definition "seeks for Peterson Farms, as a predicate to its

responses, to admit factual and legal matters which are in dispute in the lawsuit" is in contravention of the plain language of Rule 36. "A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it." Fed. R. Civ. P. 36(a).

**6. The State's use of the phrase "Waters of the State" is not objectionable**

Peterson has objected to the State's definition of "Waters of the State"<sup>10</sup> on the ground that it is allegedly "misleading, overly broad, vague and ambiguous." *See* Ex. 2, p. 3. This objection is frivolous. The definition of "Waters of the State" is taken verbatim from 2 Okla. Stat. § 10-9.1(B)(26). 2 Okla. Stat. § 10-9.1(B)(26) is part of the Oklahoma Registered Poultry Feeding Operations Act. Poultry growing operations in Oklahoma for which Peterson is legally responsible are regulated under the Oklahoma Registered Poultry Feeding Operations Act. The term is neither "overly broad" nor "misleading." In fact, provisions of the Oklahoma Registered Poultry Feeding Operations Act under which poultry growing operations in Oklahoma for which Peterson is legally responsible provide that "[t]here shall be no discharge of poultry waste to waters of the state," 2 Okla. Stat. § 10-9.7(B)(1) (emphasis added), that "[n]o waters of the state shall come into direct contact with the poultry confined on the poultry feeding operation," 2 Okla. Stat. § 10-9.7(B)(3) (emphasis added), and that "[p]oultry waste handling, treatment,

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<sup>10</sup> The State's definition of "Waters of the State" is as follows: "'Waters of the State' means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon Oklahoma or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon Oklahoma or any portion thereof. Process wastewaters shall not be considered as Waters of the State if contaminated at the site." Ex. 1 (Definition 6).

management and removal shall . . . not result in the contamination of waters of the state," 2 Okla. Stat. § 10-9.7(B)(4)(b) (emphasis added).

Peterson further objects to the State's definition on the ground that "it seeks to categorize privately-owned and localized waters as 'waters of the State,' which is unsupported by law." This objection is unfounded for the reasons set forth in "State of Oklahoma's Response to 'Motion of Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Simmons Foods, Inc., Willow Brook Foods, Inc., Cal-Maine Foods, Inc., Cal-Maine Farms, Inc., George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Cargill Turkey Production, LLC, and Cargill, Inc., for Partial Judgment as a Matter of Law Based on Plaintiff's Lack of Standing'" [DKT # 1111], which is hereby incorporated. Not only does the State have a property interest in "water running in a definite stream, formed by nature over or under the surface" in Oklahoma, *see* 60 Okla. Stat. § 60(A), but also as explained in *State of Georgia v. Tennessee Copper Company*, 206 U.S. 230, 237 (1907), "the state has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain." This latter principle was recently reaffirmed in *Massachusetts v. Environmental Protection Agency*, 127 S.Ct. 1438, 1454-58 (2007).

Finally, to the extent Peterson attempts to avoid responding to any request using the term "run-off" on the ground that the definition "seeks for Peterson Farms, as a predicate to its responses, to admit factual and legal matters which are in dispute in the lawsuit," it is in contravention of the plain language of Rule 36. "A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or



set forth reasons why the party cannot admit or deny it." Fed. R. Civ. P. 36(a). Accordingly, Peterson's objection to the term "Waters of the State" should be overruled.

**B. Peterson's General Objections not specifically incorporated into and identified in its responses should be overruled**

In each and every response given by Peterson, the response is "[s]ubject to the foregoing objections and its General Objections." *See* Ex. 2. Objections to requests for admissions "must be directed and specifically related to a specific request. General objections without any reference to a specific request to admit are meritless." *Henry*, 212 F.R.D. at 78; *see also Swachhammer v. Sprint Corp. PCS*, 225 F.R.D. 658 (D. Kan. 2004) (holding that General Objections to interrogatories where "the objecting party makes no meaningful effort to show the application of any such theoretical objection" are meritless on their face). Accordingly, the General Objections not specifically identified in and/or incorporated into the response to the request should be overruled.

**C. Peterson's temporal objection should be overruled**

Peterson has objected to each of the State's 13 requests on the ground that each is "overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period." This temporal objection is without merit for the reasons set forth in "State of Oklahoma's Motion to Compel Cargill, Inc. and Cargill Turkey Production, LLC to Respond to Its July 10, 2006 Set of Requests for Production and Integrated Brief in Support" [DKT # 1120], which is incorporated herein. *See also Diederich v. Department of the Army*, 132 F.R.D. 614, 621 (S.D.N.Y. 1990) ("To the extent that plaintiff fails to specify a time period, defendant must construe the request [to admit] to refer to the relevant time period covered by the complaint").



**D. Peterson's objections to request no. 1 should be overruled**

Request no. 1 reads: "Admit that poultry waste from one or more of your poultry growing operations has been spread on land located within the Illinois River Watershed." Ex. 1. Peterson has objected to terms used in request no. 1 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, p. 6. As a result of the litany of objections, the State is unable to discern exactly what Peterson admits or denies. Peterson's objections to request no. 1 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 1 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a) and (b) to the State's definitions of "poultry waste" and "your poultry growing operations." For the reasons set forth in sections III.A.1 & III.A.2, the State's definitions of "your poultry growing operations" and "poultry waste" are not objectionable. Third, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**E. Peterson's objections to request no. 2 should be overruled**

Request no. 2 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains one or more 'hazardous substances' within the meaning of CERCLA." Ex. 1. Peterson has objected to terms used in request no. 2 on multiple grounds, as well as raising other objections, and has

responded to the request subject to its objections and General Objections. *See* Ex. 2, pp. 6-7. As a result of the litany of objections, the State is unable to discern whether Peterson's inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. Peterson's objections to request no. 2 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 2 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a) and (b) to the State's definitions of "poultry waste" and "your poultry growing operations." For the reasons set forth in sections III.A.1 & III.A.2, the State's definitions of "your poultry growing operations" and "poultry waste" are not objectionable. Third, Peterson has objected that the State's use of the term "hazardous substances" is objectionable on the ground that "the issue of what is or is not a hazardous substance within the meaning of CERCLA is a factual and legal issue in controversy in the lawsuit." Consistent with the Rule, the State's request merely asks an admission concerning the application of law (the legal definition of "hazardous substance") to fact ("poultry waste" and its constituents). *See* Fed. R. Civ. P. 36(a). To the extent that Peterson merely objects to request no. 2 because it presents a genuine issue for trial, the objection should be overruled. *See* Fed. R. Civ. P. 36(a) ("A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it"). Fourth, Peterson objects to request no. 2 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fifth, and finally, as set forth in section

III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**F. Peterson's objections to request no. 3 should be overruled**

Request no. 3 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains pathogens." Ex. 1. Peterson has objected to terms used in request no. 3 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, p. 7. As a result of the litany of objections, the State is unable to discern whether Peterson's inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. Peterson's objections to request no. 3 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 3 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a), (b) and (d) to the State's definitions of "poultry waste," "your poultry growing operations" and "pathogens." For the reasons set forth in sections III.A.1, III.A.2, and III.A.4, the State's definitions of "poultry waste," "your poultry growing operations" and "pathogens" are not objectionable. Third, Peterson objects to request no. 3 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fourth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of

general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**G. Peterson's objections to request no. 4 should be overruled**

Request no. 4 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains phosphorus." Ex. 1. Peterson has objected to terms used in request no. 4 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, p. 8. As a result of the litany of objections, the State is unable to discern exactly what Peterson admits or denies. Peterson's objections to request no. 4 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 4 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a), (b) and (c) to the State's definitions of "poultry waste," "your poultry growing operations" and "phosphorus." For the reasons set forth in sections III.A.1, III.A.2, and III.A.3, the State's definitions of "poultry waste," "your poultry growing operations" and "phosphorus" are not objectionable. Third, Peterson objects to request no. 4 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fourth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's

objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**H. Peterson's objections to request no. 5 should be overruled**

Request no. 5 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied." Ex. 1. Peterson has objected to terms used in request no. 5 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, p. 8. As a result of the litany of objections, the State is unable to discern exactly what Peterson admits or denies. Peterson's objections to request no. 5 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 5 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a), (b) and (e) to the State's definitions of "poultry waste," "your poultry growing operations" and "run-off." For the reasons set forth in sections III.A.1, III.A.2, and III.A.5, the State's definitions of "poultry waste," "your poultry growing operations" and "run-off" are not objectionable. Third, Peterson objects to request no. 5 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fourth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**I. Peterson's objections to request no. 6 should be overruled**

Request no. 6 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Oklahoma portion of the Illinois River Watershed has run-off from the land upon which it has been applied." Ex. 1. Peterson has objected to terms used in request no. 6 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, p. 9. As a result of the litany of objections, the State is unable to discern exactly what Peterson admits or denies. Peterson's objections to request no. 6 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 6 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a), (b) and (e) to the State's definitions of "poultry waste," "your poultry growing operations" and "run-off." For the reasons set forth in sections III.A.1, III.A.2, and III.A.5, the State's definitions of "poultry waste," "your poultry growing operations" and "run-off" are not objectionable. Third, Peterson objects to request no. 6 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fourth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**J. Peterson's objections to request no. 7 should be overruled**

Request no. 7 reads: "Admit that one or more 'hazardous substances' within the meaning of CERCLA contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied." Ex. 1. Peterson has objected to terms used in request no. 7 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, p. 9. As a result of the litany of objections, the State is unable to discern whether Peterson's inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. Peterson's objections to request no. 7 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 7 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a), (b) and (e) to the State's definitions of "poultry waste," "your poultry growing operations" and "run-off." For the reasons set forth in sections III.A.1, III.A.2, and III.A.5, the State's definitions of "poultry waste," "your poultry growing operations" and "run-off" are not objectionable. Third, for the reasons set forth in section III.E.3, the State's use of the term "hazardous substances" is not objectionable. Fourth, Peterson objects to request no. 7 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fifth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled.

In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**K. Peterson's objections to request no. 8 should be overruled**

Request no. 8 reads: "Admit that pathogens contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied." Ex. 1. Peterson has objected to terms used in request no. 8 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, p. 10. As a result of the litany of objections, the State is unable to discern whether Peterson's inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. Peterson's objections to request no. 8 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 8 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a), (b), (d) and (e) to the State's definitions of "poultry waste," "your poultry growing operations," "pathogens" and "run-off." For the reasons set forth in sections III.A.1, III.A.2, III.A.4 and III.A.5, the State's definitions of "poultry waste," "your poultry growing operations," "pathogens" and "run-off" are not objectionable. Third, Peterson objects to request no. 8 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fourth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled.



In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**L. Peterson's objections to request no. 9 should be overruled**

Request no. 9 reads: "Admit that phosphorus contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied." Ex. 1. Peterson has objected to terms used in request no. 9 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, p. 10-11. As a result of the litany of objections, the State is unable to discern exactly what Peterson admits or denies. Peterson's objections to request no. 9 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 9 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a), (b) and (c) to the State's definitions of "poultry waste," "your poultry growing operations" and "phosphorus." For the reasons set forth in sections III.A.1, III.A.2 and III.A.3, the State's definitions of "poultry waste," "your poultry growing operations" and "phosphorus" are not objectionable. Third, Peterson objects to request no. 9 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fourth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**M. Peterson's objections to request no. 10 should be overruled**

Request no. 10 reads: "Admit that poultry waste contributes a greater amount of phosphorus to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined." Ex. 1. Peterson has objected to terms used in request no. 10 on multiple grounds, as well as raising other objections, and has responded to the request only subject to its objections and General Objections. *See* Ex. 2, p. 11. As a result of the litany of objections, the State is unable to discern exactly what Peterson admits or denies. Peterson's objections to request no. 10 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 10 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a) and (c) to the State's definitions of "poultry waste" and "phosphorus." For the reasons set forth in sections III.A.1 and III.A.3, the State's definitions of "poultry waste" and "phosphorus" are not objectionable. Third, Peterson objects to request no. 10 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fourth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**N. Peterson's objections to request no. 11 should be overruled**

Request no. 11 reads: "Admit that poultry waste contributes a greater amount of pathogens to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife and septic systems combined." Ex. 1. Peterson has objected to terms used in request no. 11 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, pp. 11-12. As a result of the litany of objections, the State is unable to discern whether Peterson's inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. Peterson's objections to request no. 11 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 11 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a) and (d) to the State's definitions of "poultry waste" and "pathogens." For the reasons set forth in sections III.A.1 and III.A.4, the State's definitions of "poultry waste" and "pathogens" are not objectionable. Third, Peterson objects to request no. 11 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fourth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**O. Peterson's objections to request no. 12 should be overruled**

Request no. 12 reads: "Admit that poultry waste contributes a greater amount of phosphorus to Lake Tenkiller than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined." Ex. 1. Peterson has objected to terms used in request no. 12 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, p. 12. As a result of the litany of objections, the State is unable to discern exactly what Peterson admits or denies. Peterson's objections to request no. 12 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 12 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson specifically incorporates its General Objections Nos. 1(a) and (c) to the State's definitions of "poultry waste" and "phosphorus." For the reasons set forth in sections III.A.1 and III.A.3, the State's definitions of "poultry waste" and "phosphorus" are not objectionable. Third, Peterson also objects to request no. 12 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. This objection should be overruled. Fourth, finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

**P. Peterson's objections to request no. 13 should be overruled**

Request no. 13 reads: "Admit that one or more of your poultry growing operations located in the Oklahoma portion of the Illinois River Watershed is not in compliance with its animal waste management plan." Ex. 1. Peterson has objected to terms used in request no. 13 on multiple grounds, as well as raising other objections, and has responded to the request subject to its objections and General Objections. *See* Ex. 2, pp. 12-13. As a result of the litany of objections, the State is unable to discern whether Peterson's inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. Peterson's objections to request no. 13 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

Specifically, first, Peterson has objected to the State's request no. 13 on the ground that it is unlimited in time. This temporal objection is without merit for the reasons set forth in section III.C. Second, Peterson also specifically incorporates its General Objection No. 1(b) to the State's definition of "your poultry growing operations." For the reasons set forth in section III.A.2, the State's definition of "your poultry growing operations" is not objectionable. Third, Peterson objects to request no. 13 on the ground that it is compound. To the contrary, this request is straightforward and easily comprehensible. Peterson's objection should be overruled. Fourth, and finally, as set forth in section III.B, to the extent that Peterson attempts to assert a laundry list of general objections to the requests, those objections should be overruled. In short, Peterson's objections are without merit; they should be overruled and the Court should order either that the matter is admitted or that an amended answer be served.

#### IV. Conclusion

As noted above, "[r]equests for admission are not games of 'Battleship' in which the propounding party must guess the precise language coordinates that the responding party deems answerable." *House*, 232 F.R.D. at 262. Yet that is precisely the game Peterson has played in responding to the State's requests. It is improper. The State's definitions are not objectionable. Nor do Peterson's other objections have any merit. Accordingly, the State's motion to determine the sufficiency of Peterson's responses should be granted in its entirety.

Respectfully Submitted,

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I hereby certify that on this 24th day of August, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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